

§ 160A-58.60. Appeal.

(a) Within 60 days following the adoption of the annexation ordinance, any property owner of real property located within the area described in the annexation ordinance who believes that property owner will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements set forth in this Part as they apply to the annexation may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review or within such additional time as the court may allow, the municipality shall transmit to the reviewing court both of the following:

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth.
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-58.53.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c) of this section.

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show one or more of the following:

- (1) That the statutory procedure was not followed.
- (2) That the provisions of G.S. 160A-58.53 were not met.
- (3) That the provisions of G.S. 160A-58.54 have not been met.
- (4) That the provisions of G.S. 160A-58.50 have not been met.

(g) The court may affirm the action of the governing board without change, or it may order any of the following:

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-58.54 if it finds that the provisions of G.S. 160A-58.54 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.
- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S.

160A-58.53 are satisfied or to correct errors in [the] municipal governing board's estimates that fall below the standards in G.S. 160A-58.63.

- (4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within 90 days following entry of the order embodying the court's instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the municipality without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals, or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the first June 30th at least six months following the date of the final judgment of the superior court or appellate division, or the first June 30th at least six months from the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgment.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-58.57(g) or G.S. 160A-58.59(g) and a stay is granted, then the time periods of three and one-half years or G.S. 160A-58.55(n) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-58.57(i) or G.S. 160A-58.57(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a municipality shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly.

(n) If a final court order is issued against the annexing municipality, costs in the action, including reasonable attorneys' fees for such aggrieved person having a freehold interest in the real property located within the area described in the annexation ordinance, may be charged to the municipality. (2011-396, s. 9 2012-11, s. 5; 2013-410, s. 15.)